



## Washington State Office of Civil Legal Aid

1206 Quince St. SE  
Olympia, WA 98504  
MS 41183  
360-704-4135  
360-704-4003 (fax)

James A. Bamberger, Director  
jim.bamberger@ocla.wa.gov

To: Hon. Lesley Allan, Chair, and Members of the  
Civil Legal Aid Oversight Committee

Christine Crowell, Chair  
Joan Fairbanks, Program Manager  
Access to Justice Board

From: Jim Bamberger, Director  
Office of Civil Legal Aid

Re: Quarterly Director's Report

Date: April 12, 2006

---

In accordance with the requirements of RCW 2.53.020(3)(c), I hereby submit the quarterly report of the Director of the Office of Civil Legal Aid for the period December 2, 2005 through the date of this memo.

### **I. 2006 Legislative Session**

#### **A. Supplemental Budget Request**

During much of the reporting period, the Office of Civil Legal Aid worked to secure a \$600,000 supplemental appropriation to help mitigate the consequences of the reprogramming of federal Victim of Crime Act (VOCA) funds that had been used to support emergency civil legal representation of domestic violence victims. The OCLA worked closely with the Board for Judicial Administration (BJA), the Administrative Office of the Courts (AOC), the Office of Public Defense (OPD), the Washington State Bar Association (WSBA) and the Access to Justice Board's Equal Justice Coalition in promoting this request as part of the judicial branch's unified Justice in Jeopardy initiative.

Our effort was very successful. The Legislature fully funded the supplemental budget request. Having secured the funding, OCLA began working on implementation. The Office is working closely with the Access to Justice Board's special Work Group on Legal Services to Domestic Violence Survivors to ensure the most effective approach to investing these funds. Consistent with the Work Group's earlier recommendations and OCLA's statutory mandate to ensure

geographically equitable access to state-funded legal aid services, part of the supplemental funds will be used to underwrite statewide emergency legal assistance through an expansion of the CLEAR system. NJP has agreed to hire three attorneys to respond to calls from DV survivors. In addition to expanding CLEAR, supplemental funds will likely be used to help underwrite emergency civil legal aid services for clients in regions that are demonstrably below statewide norms for DV victim legal aid service delivery capacity, and regions that face the prospect of losing essential DV victim service capacity as a result of the unmitigated loss of VOCA funding or through the non-renewal of federal Violence Against Women Act (VAWA) grants. Specific client service expectations, including subcontracting authorization, will be written into the master contract with Northwest Justice Project (NJP).

**B. SB 6348 – Legislation to Authorize State Legal Aid Funding to Represent Undocumented Victims of Domestic Violence, Trafficking and Sexual Assault**

Responding to considerations that were briefly discussed at our meeting on December 2<sup>nd</sup>, Senator Adam Kline, along with Senators Keiser, Thibaudeau, Regala, Rockefeller, Kohl-Welles, Ramussen, McAuliffe and Fairley, sponsored SB 6348 which would authorize state appropriated legal aid funding to be used to represent low income undocumented victims of domestic violence, trafficking and sexual assault. The bill mirrored recent legislation passed by Congress that allowed federal Legal Services Funding to be used to represent members of these very vulnerable classes. While the bill passed through Senate committees on party-line votes, it did not come up for a floor vote.

In the period since, the Office of Civil Legal Aid has begun to take a close look at the degree to which there is a continuing need for legislation to address the needs of the undocumented individuals who would have been helped by SB 6348. The recent amendments to the federal Trafficking Victims Protection Act (2003) and the 2005 amendments to the Violence Against Women Act (VAWA) expressly authorize the use of federal LSC funds for representation of undocumented victims of trafficking and domestic violence. Additionally, research suggests that the term “undocumented” which appears in RCW 2.53.030 is not a legal term of art, but rather generally refers to individuals who are in the United States, whose presence is unknown to appropriate immigration authorities, and who do not have a claim of right to remain in the United States under provisions of federal immigration law. Past practice (when state civil legal aid funding was administered by the Department of Community, Trade and Economic Development) suggests that there are classes of persons who, while their legal status has not been permanently addressed, are here in the United States with the knowledge of federal immigration authorities and are not subject to deportation. These include persons who have received a “prima facie” determination of right to stay in the United States under the self-petition process established under VAWA and certain victims of severe human trafficking.

The Office of Civil Legal Aid is developing a legal opinion to guide NJP and state-funded pro bono and specialty legal aid providers in making appropriate client eligibility determinations. In light of both the federal authorization and the somewhat broader authority to represent aliens who are victims of domestic violence and human trafficking with state funds, it does not appear that further legislative efforts are needed at this time.

## **II. The Justice in Jeopardy Initiative**

The BJA has established a Court Funding Implementation Committee to oversee efforts to implement the multi-faceted recommendations of the Court Funding Task Force. This Committee coordinates the Justice in Jeopardy initiative which promotes the common legislative initiatives of the trial courts, criminal indigent defense and civil legal aid communities. The Justice in Jeopardy effort was central to the judicial branch's significant legislative successes in the 2005 Legislature – including the passage of HB 1747 which created OCLA and the Civil Legal Aid Oversight Committee. It was also key to the successful efforts this past session to significantly increase funding for indigent criminal defense and representation of parents in dependency proceedings (requested by the Office of Public Defense), securing funding for a pilot jury study (BJA/AOC) and the OCLA supplemental funding request.

The Justice in Jeopardy partners have begun planning their efforts for the 2007 legislative session. Continued close coordination will be essential as we move forward to promote efforts to expand funding for court interpreter services (BJA/AOC), constitutionally required indigent criminal defense and parents representation (OPD) and to implement the key requirements of the ATJ Board's revised State Plan (OCLA)(see discussion below). A first meeting was held in early April, and a second meeting will be held in early May.

## **III. Access to Justice Board's State Plan Review Process**

The ATJ Board's State Plan for the Delivery of Civil Legal Services to Low Income People in Washington State (State Plan) defines the expectations, roles and responsibilities for all organizations involved in civil legal aid delivery in Washington State. Within the context of the limitations set forth in RCW 2.53.030, the State Plan guides the client service expectations that OCLA writes into its master contract with the Northwest Justice Project. The State Plan sets out expectations regarding delivery system organizational structure, support and coverage. It defines relationships between and amongst providers and funders. It establishes a common set of understandings, goals and objectives and accountability benchmarks designed to ensure efficient and effective delivery of civil legal aid services to all low income people throughout the state.

The State Plan was most recently updated in 1999. The ATJ Board is in the process of completing a new revision to address changes in client demographics, organizational relationships, funding requirements, etc. As noted in the last quarterly report, the OCLA Director has participated on two working committees affiliated with the State Plan review process. The first was focused on identifying and making recommendations regarding the funding and location of statewide systems and infrastructure needed to ensure effective and proper operation of the statewide legal aid delivery system.

In addition, the OCLA Director participated on a working committee reviewing the structure of the state's legal aid delivery system. This committee's efforts were focused on reviewing existing structures and relationships and developing recommendations designed to enhance system delivery and overcome barriers for clients throughout the state. This working group offered a number of recommendations designed to (a) enhance access to necessary services for low income residents of rural Washington, (b) establish a single intake/access gateway for clients

living in King County, (c) achieve efficiencies in the administration of pro bono programs and upgrade the capacity of such programs to engage larger numbers of pro bono attorneys in legal aid work, and (d) develop access and outreach systems for low income people who cannot access legal aid services through CLEAR due to social, linguistic, cultural or legal obstacles.

In January, the OCLA Director was asked to join an expanded State Plan Review Committee to pull together all the recommendations from the various working groups and develop a final set of recommendations for consideration by the ATJ Board and other organizations affiliated with the Alliance for Equal Justice (including the Civil Legal Aid Oversight Committee). Drafts were circulated, meetings have been held throughout the state and many comments have been received. In recent weeks, these comments have been processed and integrated into a new draft Revised Plan, which is still in the stages of final tweaking. It is anticipated that the final draft will be presented to the Access to Justice Board for approval at its retreat in early May.

A copy of the most recent draft is attached to this report. The salient highlights include:

**Upgrading Rural Delivery:** The revised Plan creates 18 regions made up of at least 12,000 low-income people. The equivalent of 3 FTEs are necessary in each region to provide minimum service and regional “presence”. Legal aid presence holds the local justice system accountable to the needs of low-income people, and operates to deter those who might, in the absence of a civil legal aid presence, act with impunity on matters affecting low-income people.

The revised Plan directs that the following range of legal aid services be present in all regions:

- Outreach and community education activities which help clients identify and avoid legal problems and tell them how to access the legal aid delivery system
- Timely and accurate information on common civil legal problems
- Meaningful access for all low-income people needing advice, brief service and referral
- Effective advice, brief service and assistance with document preparation (pro se support)
- Ability to provide client representation on legal problems affecting basic client needs
- Ability to provide client representation in all advocacy forums with all lawful advocacy tools
- Ability to identify and initiate effective responses to emerging client problems and opportunities
- Ability to identify and respond to emergency legal needs relating to survival and safety

**Strengthening Pro Bono:** The revised Plan takes a hard look at the pro bono system in Washington and calls for:

- Upgrading statewide capacity to provide training, technical assistance, and other support for pro bono programs
- Development of minimum standards for the provision of services

- Promoting a culture of volunteerism in local bars and development of creative solutions to overcome barriers that limit pro bono participation
- Achieving efficiencies in the administration of pro bono programs

**Centralized Intake and Client access in King County:** The revised Plan directs King County providers to develop a plan to centralize intake, access and referral services for clients living in King County, much in the same way as CLEAR has done for clients living in the other 38 counties of the state.

**Expanding Client Access:** The revised Plan directs that new and innovative efforts be undertaken to ensure meaningful access to the civil legal aid system for low income people who are unable to effectively use CLEAR or other current systems due to cultural, linguistic, status-based, ability-related or other obstacles.

**Strengthening Statewide Support Functions:** The revised Plan identifies and assigns responsibilities for the effective discharge of eight essential statewide support functions that are necessary to the successful implementation of the State Plan. These include:

- State planning and implementation
- Evaluation and accountability
- Advocacy Coordination
- Resource Development
- Professional Development and Training
- Pro bono support
- Technology
- Building support for equal justice

The revised State Plan will serve as the blueprint for OCLA's future budget recommendations and client service delivery expectations.

#### **IV. Developing 2007-09 Budget Recommendations**

As you will remember, the Supreme Court's Task Force on Civil Equal Justice Funding concluded that an additional \$28 million per year is required to address the unmet civil legal needs identified in the Civil Legal Needs Study. Of this amount, the Task Force determined that about \$18 million is needed to address those problems that fall within the areas that are eligible for state funding under RCW 2.53.030.

In 2005, the Legislature passed SB 5454 and established a special equal justice subaccount into which revenues from filing fee increases were to be paid. Funds paid into this account were to be used exclusively for criminal indigent defense, judicial salaries and civil legal aid services. \$3.0 million was appropriated to the Office of Civil Legal Aid (\$1.5 million per year during the biennium). These funds were designed to accomplish two objectives: (1) stabilize the system in the face of significant budget shortfalls (thereby avoiding the need for further layoffs); and (2) allow for small expansion of services into areas that are significantly underserved. These funds

have also been used to shore up the statewide system, open a small field office in Walla Walla (opening this month) and allow for minor expansion in areas that are significantly underserved.

As noted above, the revised State Plan serves as the blueprint for taking the next significant step toward achieving meaningful access to critically needed civil legal aid services for low income people consistent with the findings of the Supreme Court's Task Force on Civil Equal Justice Funding. The Plan contemplates establishing legal aid presence in the following underserved rural communities:

- Colville (serving Ferry, Stevens and Pend Oreille Counties)
- Omak (serving Okanogan County)
- Pullman (serving Asotin, Whitman and Garfield Counties)
- Longview (serving Cowlitz and Wahkiakum Counties)
- Aberdeen (serving Grays Harbor and Pacific Counties)
- Port Angeles (serving Clallam and Jefferson Counties)

In addition, the Plan calls for the creation of a centralized intake and access system for low income clients who live in King County but do not currently have access to services through CLEAR. Funding will be sought to underwrite the plan developed by the King County providers.

Finally, the Plan calls for efforts to overcome disproportionalities in the availability of client services throughout the state. Even with the establishment of legal aid presence in the areas listed above, there remain very significant regional inequities when all available services are considered. To help move toward achieving greater equity in client access throughout the state, the budget package will include funding for additional staff attorneys in Southeast, South Central and Southwest Washington.

Preliminary estimates of the cost to accomplish these objectives come in at about \$3.5 -- \$4.0 million per year, or about \$7 - \$8 million for the biennium. Final numbers and accompanying rationale and a formal request for endorsement of a budget mark will be presented to the Oversight Committee at its June 9<sup>th</sup> meeting.

## **V. Contract Administration and Oversight**

The OCLA is in the process of completing a final revised work plan for the NJP contract. This work plan will reflect the revised expectations that flow from three sources: (1) the 2005 funding increase; (2) the supplemental funding increase (to replace lost VOCA funds); and (3) activities designed to implement the revised State Plan. This revised work plan will also establish clear client service delivery expectations and accountability measures and will serve as a benchmark for future reviews of program performance. OCLA is planning an initial set of field office visits for the summer-fall of 2005. An on-site review of NJP's fiscal, administrative, regulatory compliance and accountability systems will be scheduled for late 2006 or early 2007.

The OCLA also administers the contract with the Washington State Grange which underwrites a statewide Alternative Dispute Resolution System (ADRS) for agricultural employment-related disputes. The Office has worked with the Grange and the ADRS Advisory Board to overcome

obstacles that have limited demand for services from this program and to secure an external assessment of the program's present and potential effectiveness. As part of this effort, the OCLA has worked with the Washington State Human Rights Commission to develop a protocol for the referral of agricultural disputes falling within the HRC's jurisdiction to the ADRS system for informal dispute resolution. A Memorandum of Understanding between the ADRS and the HRC is being developed.

## **VI. Northwest Justice Project Executive Director Transition**

On January 30, 2006, NJP Director Patrick McIntyre announced his intent to retire effective no later than September 30<sup>th</sup>. A copy of Mr. McIntyre's communication to the Alliance for Equal Justice is attached. Since this announcement, the OCLA has worked closely with Mr. McIntyre and members of the NJP Board of Directors (including NJP Board Chair Michelle Gonzalez) to provide counsel and advice and offer appropriate support and assistance as the NJP Board begins the first Director search in its 10 year history. On April 7<sup>th</sup>, I met with consultants retained by the NJP Board to share my thoughts about NJP's role in the Alliance, the NJP-OCLA relationship, and various other issues that I believe are relevant to the Executive Director search process. On the basis of my conversations to date, I have confidence that the NJP Board will undertake a thoughtful and thorough search process. I will keep the Oversight Committee apprised of the process as it moves forward.

## **VII. Proposed Rule to Extend State Rules to Judicially Created IOLTA Funding**

This matter was discussed in detail in the last report and was the subject of considerable discussion at the December 2<sup>nd</sup> Oversight Committee meeting. The Oversight Committee submitted comments opposing the proposal. Comments in opposition were also filed by the Access to Justice Board, Washington State Bar Association Board of Governors, Legal Foundation of Washington and Office of Civil Legal Aid. Acting on a request by the proponents of the rule change, the Supreme Court's Rules Committee has scheduled a special meeting to entertain further discussion on the merits of the proposal. As the proposal would undermine the ATJ Board's State Plan and limit the authorized uses of IOLTA funds, the Access to Justice Board and Legal Foundation of Washington have taken the principal lead on this issue. Judge Allan will attend the special meeting as a representative of the Civil Legal Aid Oversight Committee.

I look forward to seeing you all at the April 21<sup>st</sup> meeting.

cc: Chief Justice Alexander  
Justices of the Supreme Court  
Judge Robert McSeveney, Co-Chair BJA  
Judge Michael Trickey, President Judge SCJA  
Judge Alicia Nakata, President Judge DMCJA  
Janet McLane, Administrator for the Courts  
Jan Michels, Executive Director WSBA  
Brooke Taylor, President, WSBA  
Ellen Conedera Dial, President-Elect WSBA